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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

GEORGE JACKSON,

Plaintiff,

No. C 12-5046 PJH (PR)

vs.

J. CLARK KELSO, et. al.,

**ORDER RECLASSIFYING
CASE AND DISMISSING
WITH LEAVE TO AMEND**

Defendants.

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This case was opened when Jackson filed a habeas petition with the court (nature of suit 530). However, a review of the petition indicates that plaintiff is raising claims regarding prison conditions (nature of suit 555). The clerk shall reclassify the case on the docket as a civil rights case, nature of suit 555. Plaintiff has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;

1 the statement need only "give the defendant fair notice of what the . . . claim is and the
2 grounds upon which it rests." "*Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
3 omitted). Although in order to state a claim a complaint "does not need detailed factual
4 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
5 requires more than labels and conclusions, and a formulaic recitation of the elements of a
6 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
7 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
8 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
9 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
10 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
11 framework of a complaint, they must be supported by factual allegations. When there are
12 well-pleaded factual allegations, a court should assume their veracity and then determine
13 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
14 1937, 1950 (2009).

15 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
16 elements: (1) that a right secured by the Constitution or laws of the United States was
17 violated, and (2) that the alleged deprivation was committed by a person acting under the
18 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

19 **B. Legal Claims**

20 Plaintiff alleges that his constitutional rights for medical care and his due process
21 rights have been violated. However, other than stating defendants are violating the law and
22 should be criminally prosecuted, plaintiff has not discussed his medical needs and how
23 defendants have provided improper medical care. The complaint will be dismissed with
24 leave to amend, for plaintiff to identify specific defendants and describe how they were
25 deliberately indifferent to his serious medical needs. The court cannot prosecute
26 defendants for violating California Penal Law, so plaintiff should not set forth such
27 allegations in an amended complaint.

28 ///

1 **CONCLUSION**

2 1. The clerk shall reclassify this case as a civil rights case (nature of suit 555).
3 2. The complaint is **DISMISSED** with leave to amend in accordance with the
4 standards set forth above. The amended complaint must be filed no later than **February 4,**
5 **2013**, and must include the caption and civil case number used in this order and the words
6 **AMENDED COMPLAINT** on the first page. Because an amended complaint completely
7 replaces the original complaint, plaintiff must include in it all the claims he wishes to
8 present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not
9 incorporate material from the original complaint by reference. Failure to amend within the
10 designated time will result in the dismissal of these claims.

11 3. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
12 court informed of any change of address by filing a separate paper with the clerk headed
13 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
14 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
15 Federal Rule of Civil Procedure 41(b).

16 **IT IS SO ORDERED.**

17 Dated: January 4, 2013.



18 **PHYLLIS J. HAMILTON**
United States District Judge

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